

**Office of Chief Counsel
Internal Revenue Service
memorandum**

CC:LM:RFP:JAX:TL-N-6569-00
FLBranch:est:BAD

date: January 26, 2001

to: Arkansas Taxpayer Advocate Service
700 W Capitol, Stop 1005 LIT
Little Rock, AR 72201
Attn: Jody Trigleth, Senior Associate Advocate

from: Associate Area Counsel (LMSB), Area 3

subject: [REDACTED]
EIN: [REDACTED]
Overpayment Interest

This memorandum is in response to your request dated November 7, 2000 wherein you attach a number of spreadsheets and request our advice on the following issues.

ISSUE

1. On what dates does interest commence to run on an overpayment of tax for tax years ending January 31, [REDACTED], where [REDACTED] ("[REDACTED]") reported an overpayment of tax on its returns and elected to have the overpayment credited against its estimated tax liability for the succeeding year, and the Internal Revenue Service ("Service") subsequently determined an overassessment of tax which resulted in an additional overpayment.
2. On what date does interest commence to run on an overpayment of tax for tax year ending January 31, [REDACTED], where [REDACTED] reported an overpayment of tax on its returns and elected to have the overpayment credited against its estimated tax liability for the succeeding year, and the Service subsequently determined an overassessment of tax which resulted in an additional overpayment.
3. To which dates is interest calculated on an overpayment of tax for tax years ending January 31, [REDACTED], where [REDACTED] reported an overpayment of tax on its returns and elected to have the overpayment credited against its estimated tax liability for the succeeding year, and the Service subsequently determined an overassessment of tax which resulted in an additional overpayment.

4. To which dates is interest calculated on an overpayment of tax for tax years ending January 31, [REDACTED] where [REDACTED] reported an overpayment of tax on its returns and elected to have the overpayment credited against its estimated tax liability for the succeeding year, and the Service subsequently determined an overassessment of tax which resulted in an additional overpayment.
5. Whether the overassessment by the Service and posted on [REDACTED] [REDACTED] for the tax years ending January 31, [REDACTED] and [REDACTED] should be posted as of the due date of the returns on April 15, [REDACTED] and [REDACTED], respectively.
6. Whether the attached restricted interest computations are accurate?

CONCLUSION

1. For the portion of the overpayment which was not elected by the taxpayer to be applied to the subsequent year, interest begins to run on April 15, [REDACTED] for the taxable year ended January 31, [REDACTED] because this is the date on which the tax became overpaid. No interest is allowed on the portion of the overpayment which the taxpayer elected to apply to the subsequent year. Interest begins to run on the date that any subsequent payments and credits are made to the taxable year ended January 31, [REDACTED] for which an overpayment situation continues to exist.
2. For the portion of the overpayment which was not elected by the taxpayer to be applied to the subsequent year, interest begins to run on April 15, [REDACTED] for the taxable year ended January 31, [REDACTED] because this is the date on which the tax became overpaid. No interest is allowed on the portion of the overpayment which the taxpayer elected to apply to the subsequent year. Interest begins to run on the date that any subsequent payments and credits are made to the taxable year ended January 31, [REDACTED] for which an overpayment situation continues to exist.
3. Please refer to the attached spreadsheets for the dates on which interest ceases to run for specific amounts.
4. Please refer to the attached spreadsheets for the dates on which interest ceases to run for specific amounts.
5. Yes, the overassessment should be posted as of the due date of the returns.

6. No, the interest computations submitted to our office are inaccurate. Please refer to the attached spreadsheets for the correct dates to use.

FACTS

On October 15, [REDACTED], the Service received [REDACTED] corporate income tax return for its taxable year ended January 31, [REDACTED] after [REDACTED] received an extension to file until October 15, [REDACTED]. On its Form 1120, [REDACTED] reported a tax liability of \$[REDACTED], payments of \$[REDACTED] and application of an overpayment of \$[REDACTED] from its taxable year ended January 31, [REDACTED] resulting in an overpayment of \$[REDACTED]. [REDACTED] elected to have the overpayment applied to its January 31, [REDACTED] income tax liability. [REDACTED] actually had an overpayment credit elect from its taxable year ended January 31, [REDACTED] in the amount of \$[REDACTED]. Thus, the actual overpayment according to the facts known at that time was \$[REDACTED]. A subsequent audit of the tax year ended January 31, [REDACTED] revealed that the tax liability was \$[REDACTED] which resulted in an abatement in the amount of \$[REDACTED]. Because of a deficiency in the taxable year ended January 31, [REDACTED], \$[REDACTED] of the overpayment credit was transferred to that taxable year ended January 31, [REDACTED]. The remaining portion of the overpayment was transferred to various other tax periods and \$[REDACTED] was refunded.

On October 15, [REDACTED], the Service received [REDACTED] corporate income tax return for its taxable year ended January 31, [REDACTED] after [REDACTED] received an extension to file until October 15, [REDACTED]. On its Form 1120, [REDACTED] reported a tax liability of \$[REDACTED], payments of \$[REDACTED] and application of an overpayment of \$[REDACTED] from its taxable year ended January 31, [REDACTED] resulting in an overpayment of \$[REDACTED]. [REDACTED] elected to have the overpayment applied to its income tax liability for its taxable year ended January 31, [REDACTED]. A subsequent audit of the tax year ended January 31, [REDACTED] revealed that the tax liability was \$[REDACTED] which resulted in an abatement in the amount of \$[REDACTED]. Because of a deficiency in the tax year ended January 31, [REDACTED], a portion of the overpayment credit was transferred to that tax year. The remaining \$[REDACTED] was refunded on [REDACTED].

Interest computations were done by the Restricted Interest group in the district office. The computation was then partially re-computed. The computations were given to [REDACTED] and are still in dispute because of the dates used to compute the interest due to [REDACTED].

ANALYSIS

An overpayment includes any payment in excess of the amount of tax that is properly due. Jones v. Liberty Glass Co., 332 U.S. 524 (1947). A taxpayer may elect to apply an overpayment on its income tax return to the next succeeding tax year. I.R.C. § 6402(b); Treas. Reg. § 301.6402-3(a)(5). No interest is allowable on any portion of an overpayment that a taxpayer elects to have credited against the succeeding year's return. Treas. Reg. § 301.6402-3(a)(5).

Interest is allowed on credits from the date of the overpayment to the due date of the amount against which the credit is taken. I.R.C. § 6611(b)(1); Treas. Reg. § 301.6611-1(h)(1). The date of the overpayment is the date of payment of the first amount which when added to previous payments is in excess of the tax liability and the dates of payment of all amounts subsequently paid with respect to such tax liability. Treas. Reg. § 301.6611-1(b). If a taxpayer files a claim for credit or refund and the overpayment is refunded within 45 days after the claim is filed, no interest is allowed on the refunded overpayment from the date the claim is allowed until the day the refund is made. I.R.C. § 6611(e)(2). If an adjustment initiated by the Service results in a refund or credit of an overpayment, interest on such overpayment shall be computed by subtracting 45 days from the number of days interest would otherwise be allowed. I.R.C. § 6611(e)(3).

Issues 1, 3, 5 - Taxable Year Ended January 31, [REDACTED]

[REDACTED] disclosed a tax liability of \$ [REDACTED] on its tax return. A subsequent audit determined that the correct tax liability was \$ [REDACTED]. As of April 15, [REDACTED], the due date of the payment of tax, [REDACTED] had made payments of \$ [REDACTED]. This resulted in an overpayment on that date of \$ [REDACTED]. [REDACTED] elected to have \$ [REDACTED] applied to its tax year ended January 31, [REDACTED]. No interest is allowed on this portion of the overpayment. Treas. Reg. § 301.6402-3(a)(5).

| | |
|---------------------------------|---------------|
| Total payments as of [REDACTED] | \$ [REDACTED] |
| Correct liability | \$ [REDACTED] |
| Overpayment as of [REDACTED] | \$ [REDACTED] |
| Credit carryforward | \$ [REDACTED] |
| Overpayment as of [REDACTED] | \$ [REDACTED] |

In the case of a credit, interest accrues from the date of

the overpayment to the due date of the payment of tax of the period to which the overpayment is transferred. Because the overpayment was credited to a number of tax periods, a spreadsheet is attached showing the dates of payments to the account from which interest is calculated and the dates to which interest on specific amounts should be calculated.

The account, at all times, had a credit balance. Thus, all payments posted to the account subsequent to April 15, [REDACTED] are also dates of overpayment from which interest should be calculated.

The Form 872, Consent to Extend the Time to Assess Tax, signed by [REDACTED] on [REDACTED] provides for an extension to January 31, [REDACTED]. Consistent with I.R.C. § 6511(c)(1), the Form 872, in paragraph 2, provided that [REDACTED] could file a claim for credit or refund and the Service could credit or refund the tax within 6 months after the agreement ends. According to the information received by our office, [REDACTED] did not file a claim for refund. However, pursuant to its authority under I.R.C. § 6402(a), the Service credited and refunded the tax abated and the overpayment already existing. Pursuant to I.R.C. § 6611(e)(3), 45 days should be subtracted from the number of days interest would ordinarily be allowable on the adjustment due to the tax audit. Thus, interest is calculated to March 1, [REDACTED] rather than to April 15, [REDACTED] on \$[REDACTED]. Because the other overpayment amounts were not caused by a Service-initiated adjustment, interest is calculated to the due date of the payment of tax for the various periods to which the remaining overpayment amounts were transferred to.

Issue 2, 4, 5 - Taxable Year Ended January 31, [REDACTED]

[REDACTED] disclosed a tax liability of \$[REDACTED] on its tax return. A subsequent audit determined that the correct tax liability was \$[REDACTED]. This net tax includes the net operating loss carryback of \$[REDACTED] from the tax year ended January 31, [REDACTED]. For interest purposes, an overpayment created from a carryback is deemed to have occurred no earlier than the due date of the period from which the carryback arises which was April 15, [REDACTED]. I.R.C. § 6611(f)(1). As of April 15, [REDACTED], the due date of the payment of tax, [REDACTED] had made payments of \$[REDACTED]. This resulted in an overpayment on that date of \$[REDACTED]. [REDACTED] elected to have \$[REDACTED] applied to its tax year ended January 31, [REDACTED]. No interest is allowed on this portion of the overpayment.

| | |
|---------------------------------|---------------|
| Total payments as of [REDACTED] | \$ [REDACTED] |
|---------------------------------|---------------|

| | |
|------------------------------------|---------------|
| Correct liability as of [REDACTED] | \$ [REDACTED] |
| Overpayment as of [REDACTED] | \$ [REDACTED] |
| Credit carryforward | \$ [REDACTED] |
| Overpayment as of [REDACTED] | \$ [REDACTED] |

As of April 15, [REDACTED], the amount of the overpayment for which interest was allowable was \$ [REDACTED]. Because the tax was fully paid on April 15, [REDACTED] and the payments on that date exceeded the tax liability, the date of the overpayment of the \$ [REDACTED] is April 15, [REDACTED]. Thus, interest begins to accrue on \$ [REDACTED] on April 15, [REDACTED]. An additional credit of \$ [REDACTED] was applied to this account as of [REDACTED]. This appears to be an original credit that did not originate from another tax period. The effective payment date is April 15, [REDACTED]. Since this amount was transferred to an earlier tax period, no interest accrues on that amount. The net operating loss carryback created another date of overpayment on this account of April 15, [REDACTED].

The date to which interest runs on the \$ [REDACTED] overpayment is 45 days prior to the date interest would normally be allowed pursuant to I.R.C. § 6611(e)(3). A portion of the overpayment, \$ [REDACTED], was transferred to the tax period ended January 31, [REDACTED] with a tax due date of April 15, [REDACTED]. This is the date to which interest would normally run. Pursuant to I.R.C. § 6611(e)(3), interest should be calculated from April 15, [REDACTED] to March 1, [REDACTED]. The remaining overpayment was refunded on or about [REDACTED]. This is the date to which interest would normally run. Pursuant to I.R.C. § 6611(e)(3), 45 days should be subtracted from [REDACTED] and interest should have been allowed only until [REDACTED].

Issue 6

The interest computations for the tax year ended January 31, [REDACTED] are substantially correct. Please refer to the attached spreadsheets for the correct payment amounts and interest dates.

(b)(7)a

[REDACTED]. The interest computation submitted to our office for the tax year ended January 31, [REDACTED] was computed using the (b)(7)a [REDACTED]. It shows that the GATT rate was computed on more than \$ [REDACTED] plus allowable related interest. Because the (b)(7)a [REDACTED] is more accurate,

the tax year ended January 31, [REDACTED] needs to be recomputed using the (b)(7)a [REDACTED] interest program. Please refer to the attached spreadsheet for the correct payment amounts and interest dates.

Prior to submission of the new interest computation to [REDACTED] using the dates from the attached spreadsheet, our office requests that you submit the revised interest computations for our review. If you have any questions regarding this memorandum, please contact the undersigned at (904) 232-2788, ext. 30.

BENJAMIN A. de LUNA
Associate Area Counsel (LMSB)

By: _____
FELICIA L. BRANCH
Attorney (LMSB)